



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS TEXAS 75202-2733

DRAFT

VIA FEDERAL EXPRESS

Mr. Jerry Gidner
Director
Bureau of Indian Affairs
Washington, DC 20240

Re: Tar Creek Superfund Site, Ottawa County, OK; Clarification of the Quapaw (O-Gah-Pah) Tribe of Oklahoma's role in implementing elements of the remedy associated with chat sales; Your September 17, 2009, letter to Chairman Berrey

Dear Director Gidner:

When the U.S. Environmental Protection Agency (EPA) Region 6 issued the Record of Decision (ROD) for Tar Creek Operable Unit 4 (OU4) it was EPA's intention that the Quapaw Tribe of Oklahoma would play an intrinsic role in chat sales. Chat sales are a key component of remedy for the contaminated parts of Ottawa County. Working together, EPA and the Quapaw Tribe concluded that the Tribe should perform the following tasks to facilitate chat sales:

- Coordinate with restricted chat and property owners regarding EPA's plans for facilitating chat sales;
- Participating in EPA's planned "Chat Sales Workshops;"
- Providing information to prospective purchasers of Indian owned chat, including restricted chat, to help encourage chat sales;
- Arranging site visits with potential chat purchasers to assess Indian-owned chat piles, including restricted chat piles, to help them assess the general value of the chat;
- Participate in all meetings regarding chat sales, and participate in the development of Fact Sheets related to chat sales;
- Provide environmental regulation compliance information to prospective purchasers of Indian chat, including restricted Indian chat;
- Coordinate with EPA in its efforts to obtain property access, and to obtain Indian property owners' consent, including restricted Indian property owners' consent, for remediation activity; and
- Coordinate with EPA in efforts to contact restricted owners regarding all matters related to proposed actions under the OU4 ROD.

EPA has entered into (and funded) a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Cooperative Agreement with the Quapaw Tribe. Under that Agreement (copy enclosed), the Tribe has agreed to perform the actions listed above. Due to an apparent misunderstanding of the ROD, however, the Tribe has been prevented from doing what our Agreement calls for. This letter is intended to clear up the misunderstanding, so the Quapaw and EPA, working with the Bureau of Indian Affairs (BIA), can move forward with chat sales.

In your September 17, 2009, letter to Chairman Berrey of the Quapaw, you essentially say that "consistent with the provisions of the OU4 ROD. . . BIA must retain," to the exclusion of the Quapaw, performance of the functions associated with the "chat sales program that benefits individual Indian allottees." Based on the September 17 letter (and, indirectly, our ROD) BIA and DOI officials have called

for the Quapaw to cease their involvement in the very functions that our Cooperative Agreement asks for them to undertake. We want to make it clear that, although BIA has a large role in chat sales under the ROD, EPA did not intend that BIA would have exclusive control over these chat sales related functions. Consequently, pursuant to Presidential authority delegated to me under CERCLA, I have issued an explanatory statement (enclosed) that has been appended to, and incorporated into, the ROD.

In short, this ROD appendix says that it is EPA's intention that, as part of the selected remedy, the Quapaw shall undertake all the actions listed in the bulleted items above, as our authorized agent under a Cooperative Agreement. The ROD appendix also says that EPA encourages BIA and DOI to undertake the functions listed in Section 19.2.2 (Chat Sales and Environmentally Acceptable Chat Use) of the ROD at pages 47 and 48 in coordination with the Quapaw.

Your letter also mentions that you have financial concerns related to funding of the Quapaw's chat sales activities. You should know that all the activity we have asked the Quapaw Tribe to perform as our CERCLA-authorized agent, including all the tasks listed in the bulleted items above, have already been funded by EPA.

Some of your staff may recall that our chat sales pilot project had stalled until the Quapaw Tribe of Oklahoma became involved. The Tribe's aggressive sales campaign found a Kansas construction company that purchased large quantities of chat to the benefit of individual restricted Indians. In addition, the Tribe's one-on-one interaction with the multiple Indian owners of the targeted chat pile made the contract possible. The Tribe's ability to reach out to the community saved untold Government resources and made the project a success. After the pilot project, the U.S. Department of the Interior (DOI) and BIA strongly supported the inclusion of chat sales as a remedy element documented in the ROD.

We hope you agree that working with the Quapaw Tribe will support continued chat sales at Tar Creek, and we hope this letter will encourage BIA and DOI to work directly with the Quapaw in facilitating chat sales. If you have any questions, please call me at (214) 665-3110.

Sincerely yours,

Samuel Coleman, P.E.
Director, Superfund Division

Enclosure

cc: The Honorable John Berrey, Chairman Quapaw Tribe of Oklahoma
Mr. Stephen Ward, General Counsel, Quapaw Tribe of Oklahoma
Principal Deputy Solicitor Rachel Jacobsen, DOI
Deputy Solicitor Pilar Thomas, DOI
Ms. Eufroa O'Neil, BIA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

**RECORD OF DECISION
OPERABLE UNIT 4
CHAT PILES, OTHER MINE AND MILL WASTE, AND SMELTER WASTE
TAR CREEK SUPERFUND SITE**

**OTTAWA COUNTY, OKLAHOMA
OKD980629844**

EXPLANATORY APPENDIX I

The purpose of this Appendix to the above-referenced Record of Decision (ROD) is to clarify and explain the intention of the U.S. Environmental Protection Agency (EPA) regarding the involvement of the Quapaw Tribe of Oklahoma with respect to the following actions necessary to implement the chat sales component of the remedy selected in the ROD. EPA intends that the Quapaw Tribe of Oklahoma will undertake the following actions as EPA's authorized agent pursuant to a Cooperative Agreement under the Comprehensive Environmental Response, Compensation, and Liability Act:

- Coordinate with restricted chat and property owners regarding EPA's plans for facilitating chat sales;
- Participating in EPA's planned "Chat Sales Workshops;"
- Providing information to prospective purchasers of Indian owned chat, including restricted chat, to help encourage chat sales;
- Arranging site visits with potential chat purchasers to assess Indian-owned chat piles, including restricted chat piles, to help them assess the general value of the chat;
- Participate in all meetings regarding chat sales, and participate in the development of Fact Sheets related to chat sales;
- Provide environmental regulation compliance information to prospective purchasers of Indian chat, including restricted Indian chat;
- Coordinate with EPA in its efforts to obtain property access, and to obtain Indian property owners' consent, including restricted Indian property owners' consent, for remediation activity; and
- Coordinate with EPA in efforts to contact restricted owners regarding all matters related to proposed actions under the OU4 ROD.

In addition EPA intends to encourage the U.S. Department of the Interior, its agencies and bureaus, including without limitation the Bureau of Indian Affairs, to work with the Quapaw Tribe of Oklahoma to complete the tasks described in Section 19.2.2 (Chat Sales and Environmentally Acceptable Chat Use) of the ROD at pages 47 and 48.

The Director of the Superfund Division (EPA, Region 6) has been delegated the authority to approve this explanatory appendix to the ROD pursuant to Delegation 14-2 and Delegation R6-14-14-2.

U.S. Environmental Protection Agency (Region 6)

By:

Samuel Coleman, P.E., Director
Superfund Division (6SF)

Date